

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PRETRIAL CONFERENCE
BEFORE THE HONORABLE LYNN N. HUGHES

16 For the Plaintiffs: Mr. Andrew R. Frisch*
17 Morgan & Morgan, PA
6824 Griffin Road
Davie, FL 33314

18 For the Defendants: Ms. Ethel J. Johnson
19 Ms. Elizabeth L. Bolt
20 Shook, Hardy & Bacon, LLP
600 Travis, Suite 1600
Houston, TX 77002

Court Reporter: Bruce Slavin, RPR, CM

*Appearing via teleconference.

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25 by computer-aided transcription.

1 THE COURT: Mr. Frisch.

2 MR. FRISCH: Good morning, Your Honor. How are
3 you?

4 THE COURT: I'm fine. We'll see if I am 15 minutes
10:34 5 from now.

6 I have got Johnson and Bolt here.

7 MR. FRISCH: Good morning.

8 MR. JOHNSON: Good morning.

9 MS. BOLT: Good morning.

10:34 10 THE COURT: Apparently, they thought they could
11 improve on my notice and they put a bunch of bureaucratic
12 garbage. You can't see the edits, but I am going to share
13 this with them, like putting "'Fluctuating Workweeks'" with
14 initial capitals and quotation marks, a gratuitous comma
10:35 15 after "workweeks" before, quote, "Chinese overtime" and
16 "have a claim" instead of "you may ask" and other things
17 like that. I have redone it. You obviously haven't seen
18 it. It still needs some work so that the right things are
19 emphasized, but the essence is the same, I think.

10:36 20 And I thought we were going to have a website.

21 MR. FRISCH: We're going to. We haven't set it up
22 yet. We would just like that on there. It's simply going
23 to be "Saybolt Overtime Lawsuit" dot com, most likely.

24 THE COURT: No. That's awful. You're as bad as
10:36 25 they are.

1 MR. FRISCH: So, I guess let's discuss it. Well,
2 what do you -- I know you said you, quote, unquote, own it;
3 so, tell me what you're thinking.

4 THE COURT: No. Don't put that in quotes. See,
10:36 5 you're just like them. I am going to own it. I know where
6 Florida is. Don't make me come down there. It should be
7 "Saybolt" hyphen "workers" dot com.

8 MR. FRISCH: Okay.

9 THE COURT: And if for some reason some union has
10:36 10 got it or something, stick a "2011" on the end of it or
11 something like that. I want it neutral.

12 All right. The limitations stopped March
13 16th, 2011.

14 Mr. Frisch, the workers filed their suit in
10:37 15 North Carolina. The fact that it needed to be transferred
16 is not the company's fault.

17 MR. FRISCH: It didn't need to be transferred.

18 THE COURT: Well, apparently, Judge Whatever in
19 North Carolina thought it did. We even have things like
10:37 20 naming a class representative who is not even a part of the
21 lawsuit. So, we're going to start it then.

22 And Saybolt cannot Twitter my case manager.
23 This is a document about the case. It needs to have a
24 caption and be filed. You can do that electronically, but
10:38 25 you can't write the case manager personally. I don't care

1 how she is. I care whether she gets her job done. You
2 shouldn't care how she is. You should care whether she gets
3 her job done. So, cut the chat, file the document and
4 produce it in a way that's legible.

10:38 5 MS. BOLT: Yes, Judge.

6 THE COURT: And I know what you're thinking.

7 Isn't she?

8 She's sitting there thinking, 'Well, he's old.
9 He won't be able to read anything.' Well, I have young
10 eyes --

11 MS. BOLT: Yes, sir.

12 THE COURT: -- and I pay them a lot of money, and
13 they actually stop at two-point type and, when it gets below
14 that, even they can't read it.

10:39 15 MS. BOLT: Yes, Judge.

16 THE COURT: So, I have no idea what this says, but,
17 if you think I should, it might need to be one of those
18 things where you have got four sheets of paper with it
19 filling up the sheet of paper for each four -- the block so
10:39 20 I can lay them across my desk and, that way, it's easy to
21 actually file it because it will just be Page 1, 2, 3 and 4.
22 Because that's bigger.

23 MS. BOLT: Yes, sir. This is larger. And we may
24 have misunderstood, Judge. We thought that you wanted
10:39 25 everything on one sheet of paper and we were trying to

1 accommodate that and that's an error on our part.

2 THE COURT: Well, no. You can produce a 30-inch-
3 by-24-inch sheet of paper if you want to. I was suggesting
4 that I am capable of lining up four 8-1/2-by-11 sheets with
10:40 5 help.

6 MS. BOLT: Understood.

7 THE COURT: I mean, this is better, but that's a
8 lot of numbers and not much --

9 She's just given me an 8-1/2-by-14-inch. Only
10:40 10 somebody from Kansas would have that kind of paper on them.
11 And you know Glenda Hassan is from Kansas; so, don't be
12 messing with her. She knows where Kansas City is.

13 Have you, Mr. Frisch, been able to read these
14 numbers and the analysis and what they did here?

10:40 15 MR. FRISCH: I have read the numbers and I think I
16 understand each of the columns, aside from the one that
17 purports to be Plaintiff's formula, which, as you probably
18 know, is not Plaintiff's formula. We at no point asserted
19 that that -- I'm not even sure how they calculated it, but
10:41 20 that's not the proper formula that we assert should be
21 applicable, although, again, we do think this is a merits
22 issue that probably does not properly bring to the stage to
23 the extent that Your Honor has asked us to look into it. We
24 have provided a stand-alone document that is Plaintiff's
10:41 25 calculations per the formula to counsel previously in the

1 case and per the vast majority of the case law.

2 THE COURT: If you think the fourth column is
3 incorrect because it says "Guaranteed salary times 1 1/2
4 times overtime plus incentive and premium" -- That's not the
10:41 5 formula you're using?

6 MR. FRISCH: Well, the issue is that they're not --

7 THE COURT: I just want an answer.

8 MR. FRISCH: Yes. That's not the formula that I am
9 using. I am using the formula that I think I put -- I think
10:42 10 it actually says which formula I used in general terms on
11 the Plaintiff's PDF calculation sheet.

12 THE COURT: All right. But I want you to send a
13 formula like this one that it is in five terms, or four
14 terms when it has the "and". Why isn't that a "plus"? You
10:42 15 have the term "formula" and it's "plus incentive and
16 premium". So, it should be "plus", parenthesis, "incentive
17 plus premium", close parens.

18 History major?

19 MS. BOLT: Close. English.
10:42 20 THE COURT: That's even worse. Sit around in a
21 circle and talk about how everybody felt in Managua.

22 So, get a formula and Bolt will, using the
23 same data and the same format, produce a Column 5 to this.

24 And, Miss Bolt, I would prefer that you say
10:43 25 "Pay Practice Alternative A, Alternative B, Alternative C".

1 MS. BOLT: Yes, sir.

2 THE COURT: And that doesn't commit anybody to any
3 of them. And then we'll figure out which is the right one,
4 regardless of whether it's Frisch or Johnson's idea. I
10:43 5 don't care whose idea. I just want to figure out which one
6 is the right one.

7 And have we agreed that DeRoche and Pointer,
8 Ponter --

9 MS. JOHNSON: Porter.

10:43 10 THE COURT: -- Porter should be the class
11 representatives, Mr. Frisch?

12 MR. FRISCH: We have no objection, Your Honor. I
13 think Ravia is equally as good a representative, but if Your
14 Honor prefers -- As long as we choose people so it can move
10:44 15 forward, that's fine.

16 MS. JOHNSON: Judge, we objected to Ravia because,
17 under our calculation, Ravia has not suffered any damages.
18 And, therefore, to get that dispute out of the way, Willie
19 Porter is the person who may have similar standing.

20:44 20 THE COURT: All right. Well, let's use DeRoche and
21 Porter and, as you said, get on with this.

22 And as long as we're here and got this mostly
23 done -- These are all fairly sophisticated people. We have
24 e-mail addresses for all of them?

20:45 25 MS. JOHNSON: I think we can, Judge.

1 THE COURT: By when will we have those?

2 MS. JOHNSON: I will find out probably this
3 afternoon.

4 THE COURT: Are we talking about 200 people?

10:45 5 MS. JOHNSON: Yes, Judge.

6 THE COURT: I believe it would be useful to go
7 ahead and e-mail them, but go ahead and mail them to the
8 last known address, please. E-mail addresses are -- well,
9 all addresses are variable and doubling up, I think, is the
10 better practice.

11 Now, do you want to mail them or do you want
12 Frisch to mail them?

13 MS. JOHNSON: We'll mail them.

14 THE COURT: All right. What's the return address
15 going to be?

16 MR. FRISCH: It should be our office, Your Honor.

17 MS. JOHNSON: It should be the Frisch's office.

18 MR. FRISCH: We're happy to mail them if -- You
19 know, traditionally, we have mailed them.

10:46 20 THE COURT: I don't care, but I want the return
21 address to be a simplified, just, you know, real, accurate
22 mailing address but with the address being "Saybolt Workers
23 2011" or whatever you end up as the website. If you put my
24 name on it nobody will open it. If you put Frisch's nobody
10:46 25 will open it. If you put Johnson's name on it they'll burn

1 it before and not open it.

2 MR. FRISCH: I propose that we send it out -- if
3 there is no issue, we would like to include a
4 self-addressed, stamped envelope back to us.

10:46 5 THE COURT: I think that would be useful.

6 MS. JOHNSON: For counsel for Dacar to send them as
7 well as be the recipient of them?

8 THE COURT: Yes.

9 MS. JOHNSON: No problem. That's fine.

10:47 10 THE COURT: The return-address envelope -- and on
11 that envelope, as opposed to the envelope to go out, it can
12 say "Saybolt Workers in Care of..." and then put you. Got
13 it?

14 MR. FRISCH: Got it.

10:47 15 THE COURT: And do it tastefully. After all, this
16 is all being done indirectly under my name, so -- And help
17 the poor old postmen. Put the address in 12- or 13-point
18 type and have it so it has the dignity.

19 How come you didn't want me to put this
10:47 20 approval on the notice?

21 MS. JOHNSON: Judge, I think that it could be
22 suggestive that the Court has somehow approved that --

23 THE COURT: The notice? They might get that idea,
24 yeah.

10:47 25 MS. JOHNSON: Yeah, it says the notice, but I am

1 thinking folks may take that a step further, to think that
2 the Court has approved that they deserve money.

3 THE COURT: Then, I will equally disabuse them of
4 that notion if they're wrong. But I don't want these hard-
10:48 5 working, fine, upstanding middle-American oil scientists to
6 think that some slick in Florida is sending them a
7 solicitation.

8 MS. JOHNSON: Well, Judge, I have a question about
9 the notice. In the envelope -- I understand what the Court
10:48 10 wants to go on the envelope itself. I am assuming there is
11 no cover letter of any --

12 THE COURT: Nothing in the envelope except the
13 notice and the return envelope.

14 MR. FRISCH: Your Honor, could we also have just a
10:48 15 blank request for their personal information so we can set
16 them up, their contact information -- their names, address,
17 phone numbers, e-mail, date of birth?

18 THE COURT: Isn't that on the consent?

19 MR. FRISCH: No.

10:49 20 THE COURT: Why not?

21 MR. FRISCH: We can put it on the consent, but I am
22 happy to show Miss Johnson what I'm talking about. Really,
23 it's just to get the basics of each person.

24 MS. JOHNSON: Judge, we'd prefer that that not be
10:49 25 there.

1 THE COURT: Well, what's the consent say?

2 MR. FRISCH: The consent says their -- it has their
3 name on it that they fill in when they sign and date it, and
4 it says that they're consenting to join the lawsuit and all
10:49 5 the important things that come with that.

6 THE COURT: Well, I don't know about that. Just
7 send that with the case number to Glenda so I can look at
8 it. But the obvious thing to do is to put their street
9 address, telephone and fax and date of birth or something on
10:49 10 the -- I don't want extraneous stuff.

11 And, Mr. Frisch, it's conventional west of the
12 Mississippi to say "Yes, sir" and "No, sir" to judges, not
13 "Yeah".

14 MR. FRISCH: I apologize, Your Honor.

10:50 15 THE COURT: All right. If you will get the
16 information sheet and the consent form and, please, in an
17 admirable form, get it to Glenda today.

18 Assuming I get you back revised drafts of all
19 that sometime tomorrow, you can get them all the addresses
10:50 20 you have in some electronic form by Tuesday afternoon?

21 MS. JOHNSON: I believe so. I'll have to get it
22 from my company, but I will certainly see if they --

23 THE COURT: Right. Not that Bolt has anything to
24 do this week.

10:50 25 Right?

1 MS. BOLT: That's right.

2 THE COURT: And if you get the addresses Tuesday
3 when can you mail the notices, Mr. Frisch?

4 MR. FRISCH: I would think, Your Honor, no later
10:51 5 than Thursday. It's really just a matter of putting the
6 address and creating address labels and putting it on the
7 envelopes. But probably, let's say, it should not be any
8 later than Thursday, Your Honor.

9 THE COURT: All right. In the expectation that
10:51 10 they will absolutely be in the mail Friday -- And Friday is
11 fine. I mean, I want them to go out, but it's more
12 important they be done right than they be done immediately.

13 So, Friday is the 10th. So, the response day
14 in the notice will be July 8th. It has to be mailed by July
10:52 15 8th. And I think we accept things that are postmarked
16 through the 12th.

17 MS. JOHNSON: Through the 12th?

18 THE COURT: Yeah. Don't tell anybody that, but you
19 know there has to be a deadline, but finding an open post
10:52 20 office and things like that can be a time-consuming task.

21 MR. FRISCH: Your Honor, can I speak to that --

22 THE COURT: Yes, sir.

23 MR. FRISCH: -- for a second?

24 THE COURT: Sure.

10:52 25 MR. FRISCH: It seems to me that that's an

1 inordinately short amount of time, especially given the
2 nature of the work that these men and ladies perform and
3 what it wants them to do, aside from the fact that people,
4 as you pointed out, frequently move. Even if they move --

10:52 5 THE COURT: If you --

6 MR. FRISCH: -- across the street they may not --
7 and they no longer work there and they no longer have an
8 e-mail address, they may not even receive the notice within
9 the period of time; it's so short. But even if they're
10 10 currently working there and we have their correct address,
11 11 due to the nature of the work that the inspectors perform --
12 12 a lot of them, if they're offshore, may be away for a week
13 13 or two or more. Even if we have their correct addresses --

14 THE COURT: They're not going to be off for a
15 15 month.

16 MR. FRISCH: I'm sorry?

17 THE COURT: They're not going to be off for a
18 18 month.

19 MR. FRISCH: Well, it's possible.

10:53 20 THE COURT: It violates the Fair Labor Standards
21 21 Act to keep them out there a month.

22 MR. FRISCH: I'm sorry?

23 THE COURT: It violates the labor laws to keep them
24 24 out there for a month.

10:53 25 MR. FRISCH: Well, they just may not be at their

1 homes. You're right, Your Honor.

2 THE COURT: They may tell their wives they have
3 been offshore for a month.

4 MR. FRISCH: But, in my experience -- We have
10:53 5 handled cases against competitors in the last few years.

6 From my experience and for whatever reason, it has taken
7 people longer than 30 or 45 days to return their notices.

8 THE COURT: Well, I'll round it up to 45 days. But
9 these are educated, competent, paperwork-familiar -- We're
10:54 10 not doing busboys. And, of course, if the post office
11 returns the things, then those people are exempt from the
12 deadline anyway; they never got notice.

13 MR. FRISCH: Just one further point, Your Honor.

14 THE COURT: Yes, sir.

10:54 15 MR. FRISCH: The issue that goes along with this is
16 what very frequently happens -- and Your Honor is probably
17 familiar with this issue -- is that, if we make it such a
18 short deadline, inevitably what happens is in 50 days, 55
19 days, 60 days they receive their notices, and then if
20 Saybolt does not agree, which would then be their right, or
21 consent to allow those people to still join the case, we get
22 stuck with the issue of filing subsequent lawsuits for
23 people that could have joined the case, you know, but for
24 the difference of five or ten days. And I know that's an
10:55 25 issue that can't ever be alleviated because it's helpful to

1 have to have a firm deadline. I recognize that. To have a
2 lengthier deadline it helps with that issue at least a
3 little bit.

4 THE COURT: On the other hand, the long deadline of
10:55 5 people who intend to do it and put it out of their mind,
6 that they're going to do did it next month and then they
7 don't comply.... So, you're actually creating a booby trap
8 for people who would do it on time. I think 45 days is
9 enough.

10:55 10 One of my favorite responses to a class action
11 notice was "Dear, Judge. I'm not qualified, but if you're
12 handing out money I'd like some." Now, who takes the time
13 to fill that out and mail it?

14 All right. So, it's going to go on the 10th.
10:56 15 All right. So, July 20 --

16 Do you get your mail at a street address or a
17 post office box? Oh. It's right here. Do you get good
18 mail delivery, Mr. Frisch?

19 MR. FRISCH: Yes, I do, Your Honor, as far as I
10:56 20 know.

21 THE COURT: Like my personal mail, for security,
22 comes to a post office box in a dinky, little post office in
23 this building. On many Mondays, a heavy day because we
24 don't get service on Saturday, they just don't bother to put
10:57 25 it up because it's a lot of trouble to sort that and get it

1 up. So, they just tell you there was no mail.

2 So, I am going to round it to the 26th just in
3 case some of our people....

4 So, they've got to mail it by then. There
10:57 5 will be a period of grace, but nobody can know about it. In
6 fact, I'm not going to tell you all about it. I'll make it
7 up later.

8 So, that blank is 7-26-11. I think that's....

9 All right. Anything else we can do this
10:57 10 morning?

11 MS. BOLT: Judge, I'd like to just get a little
12 clarification on the -- I want to make sure that we submit a
13 sheet that's easy for you to read. It's permissible with
14 you if we do individual sheets and then you can print those
10:58 15 and tape them together, on the calculations?

16 THE COURT: I'll just lay them on my desk in the
17 order they go, and if I don't like one I can move it against
18 the others.

19 MS. BOLT: Perfect.

10:58 20 THE COURT: Mr. Frisch will get you the formula so
21 that there can be a parallel column to his calculations and
22 that will be "C" for Florida.

23 MS. BOLT: Understood.

24 THE COURT: You get vitamin C from oranges.
10:58 25 Oranges come from Florida. It's perfect.

1 MS. JOHNSON: Judge, one point of clarification.

2 (Off-the-record discussion)

3 THE COURT: Anything else?

4 MS. JOHNSON: Judge, I had a question about the
10:59 5 website that the Court is going to own. In what way are the
6 potential plaintiffs going to be advised of the website?
7 Does it go on the notice or does it go somewhere else?

8 THE COURT: Yes. Mr. Frisch will add to this
9 notice, widely spaced below your name and address, "C"
11:00 10 colon -- or, actually, "C" and then center that in a column
11 and underneath centered put just the website. If they don't
12 know what to do with the website I don't want them.

13 All right. Anything else?

14 MR. FRISCH: Your Honor, just one point of
11:00 15 clarification. I guess these are questions that are posed
16 to counsel.

17 THE COURT: Ask me and I will ask her.

18 MR. FRISCH: Okay. My understanding -- I know
19 that -- I have previously provided this formula. So, do I
11:00 20 need to provide the formula again?

21 THE COURT: I want you to tell Bolt exactly what
22 you want as the formula for that column, looking at her
23 inarticulate representations of the other formula. I just
24 want, today, you to make sure. So, send her a clean,
11:01 25 arithmetically coherent formula to go under "Alternative C."

1 MS. JOHNSON: Did you want this back, Judge?

2 THE COURT: No. I want you to frame it.

3 MS. JOHNSON: You want me to clean it up?

4 THE COURT: I have already cleaned it up. I can't
11:01 5 trust you. Anybody who would add that to my beautiful form
6 can't be trusted to do edits. I want you to frame it and
7 admire your work.

8 All right. Thank you, counsel.

9 MR. FRISCH: Your Honor, one last thing. I
11:01 10 apologize. I didn't realize -- Are we going to get an
11 e-mailed copy of the notice that Your Honor has finalized,
12 with the exception of the website?

13 THE COURT: You will get a text copy from Glenda.
14 So, she'll just send you the file with it so that it doesn't
11:02 15 get garbled. I will print one before I send it and file it
16 so it will be in the record. And we'll send Saybolt the
17 same text copy you get, but, that way, you will be able to
18 edit it and it won't be in a PDF that then somebody has to
19 retype and they add a bunch of stuff like people do.

11:02 20 MR. FRISCH: Understood.

21 THE COURT: When will you know what the website is?

22 MR. FRISCH: Probably this afternoon. As I said,
23 it's after prior conferences. Our intention is to -- the
24 main page of the website will just be the notice. So, once
11:03 25 we have the notice, you know, finalized and formatted we'll

1 then purchase the domain, I guess, and after reviewing --

2 Well, actually, I could check right now, but I think --

3 THE COURT: Well, I can't wait for that. But I'm

4 going to wait until I know what the domain name is. I am

11:03 5 going to put it on here and send an image with everything

6 exactly where I want it the way I want it. So, if you will

7 e-mail that to Johnson and Hassan so that I can incorporate

8 it, and then you will get an imaged copy of it and not a

9 text copy. And, as soon as you can, get me the consent and

11:03 10 your information blank and I will see what I can do with

11 that as quickly as I can.

12 MR. FRISCH: I will try to do that all in one

13 e-mail which will have co-counsel on it as well, Your Honor.

14 THE COURT: Okay. All right. Thank you.

15

16 COURT REPORTER'S CERTIFICATE

17 I, BRUCE SLAVIN, certify that the foregoing is a

18 correct transcript from the record of proceedings in the

19 above-entitled matter, to the best of my ability.

20

21 *s/Bruce Slavin*
22 BRUCE SLAVIN, RPR, CM

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